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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,963	09/19/2000	Kevin W. Anderson	M 6560 OS/OAPT	5388

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EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT PAPER NUMBER

1651

16

DATE MAILED: 03/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Applicati n N .

09/663,963

Applicant(s)

WENZEL ET AL.

Examiner

DR. Kailash C. Srivastava

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

THE REPLY FILED 20 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ATTACHMENT TO ADVISORY ACTION

1. The response filed February 20, 2002 (paper number 15) has been received and considered.
2. Applicant's election with traverse of Group I, claims 1-12 and election of species to "ammonium sulfate as the inorganic source of nitrogen and calcium as at least one metal" was already considered in the Office Action of 07/17/2001 (Paper Number 12) and the restriction requirement was deemed proper and made FINAL. Accordingly, Claims 4-5, 8-9 and 13-28 were withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to non-elected claims, and claims 1-3, 6-7 and 10-12 have been considered on merits.
3. Lastly, the art rejections of record will be maintained. Applicants argue on pages 2-4 of the response filed on 02/20/2002 (paper Number, 15) that the claimed invention is not anticipated by the Shirai reference that the Examiner cites in Office Action of 12/31/ 2001 (Paper Number 14).

Applicants' arguments regarding the prior art references have been fully considered but are not persuasive. This is because the Shirai reference clearly discloses a fermentation medium comprising the same ingredients (Column 8, Lines 15-25, Table 3) as claimed in the instant invention. Furthermore, the fermentation medium disclosed in the cited reference was sterilized at 110°C (Column 8, Lines 10-11), and all the ingredients of the culture medium disclosed in the cited reference (Column 8, Lines 15-25, Table 3) are soluble in water. Therefore, the fermentation medium disclosed in the Shirai reference is free of bacteria and particulate material, unless applicant can demonstrate otherwise.

Applicants' arguments on pages 3-4 of the response filed February 20, 2002 (paper number 15) in regard to the applicants' previous argument of claimed fermentation medium requiring biotin, a source of phosphate, and atleast one metal component has also been considered. In response to that the examiner would like to point out that Tables 2 and 3 of Shirai reference clearly disclose a fermentation medium composition comprising, biotin, a source of phosphate (KH_2PO_4) and a metal (e.g., $\text{CaCl}_2 \cdot 2 \text{H}_2\text{O}$). The mention of antifoam and chelating agent and the verbiage, " even though their statement might seem that these

components are optional in their culture medium" on Page 3 of Paper Number 14 was a mere example to indicate that Shirai reference discloses a number of fermentation media, but each one of fermentation media compositions that the Shirai reference discloses is comprised of the same essential ingredients (e.g., biotin, a source of phosphate (KH_2PO_4) and a metal (e.g., $\text{CaCl}_2 \cdot 2 \text{H}_2\text{O}$) that are required in the claimed fermentation medium composition.

4. In sum, Claims 1-3, 6-7 and 10-12 fail to be patentably distinguishable over the prior art discussed above. Therefore, the claims are properly rejected under 35 U. S. C. § 102(b).


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (703) 605-1196. The examiner can normally be reached on Monday to Thursday from 8:30 A.M. to 6:30 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit **1651**
(703) 605-1196

KCS
February 28, 2002



FRANCISCO PRATS
PRIMARY EXAMINER